No. 75-1197

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

vs.

HELEN DE CASTRO,

Appellee.

On Appeal From The United States District Court
For The Northern District of Illinois

MOTION TO AFFIRM

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To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court:

Appellee, HELEN de CASTRO, prays that an order issue affirming the judgment of the United States District Court for the Northern District of Illinois entered on September 30, 1975.

QUESTION PRESENTED FOR REVIEW

Whether Section 202(b)(1) of the Social Security Act, 42 U.S.C. §402(b)(1), which denies benefits to a divorced wife of a wage-earner who has not attained age 62, but who has an entitled child of the wage-earner in her care violates the Due Process Clause of the Fifth Amendment.

STATUTORY PROVISIONS INVOLVED

The provisions of the Social Security Act at issue are as follows:

Section 202(b)(1) of the Social Security Act, 42 U.S.C. §402(b)(1) provides:

> The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—
>
> (A) has filed application for wife's insurance benefits,
>
> (B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,
>
> (C) in the case of a divorced wife, is not married, and
>
> (D) is not entitled to old-age or disability insurance benefits or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual, shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—

> (E) she dies,
>
> (F) such individual dies,
>
> (G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 20 years immediately before the date the divorce became effective,
>
> (H) in the case of a divorced wife, she marries a person other than such individual,
>
> (I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,
>
> (J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount of such individual, or
>
> (K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Section 216(d)(1) of the Social Security Act, 42 U.S.C. §416(d)(1) provides:

> The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective.

STATEMENT OF FACTS

The material facts in this case, which are set out in the appellant's jurisdictional statement as well as the opinion of the District Court (Part I, App. A, p. 3a, Appellant's Jurisdictional Statement), are not in dispute. Appellee, who was born on February 18, 1915, has not attained age 62. She and the wage-earner, ALBERT de CASTRO were validly married on September 9, 1946, and were divorced on February 8, 1968, after more than 20 years of marriage. Two children were born of the marriage, namely ROSEMARY de CASTRO and CATHERINE de CASTRO. CATHERINE de CASTRO, a mentally disabled child entitled to child's insurance benefits, requires continuous custodial care and supervision. She has been in the appellee's care at all relevant times, and particularly since December 5, 1966, when ALBERT de CASTRO deserted appellee and his family and returned to the Philippine Islands where he has since remained. Appellee is not married and is not entitled to old age or disability insurance benefits.

On September 23, 1971, appellee filed an application for wife's insurance benefits on the account of ALBERT de CASTRO as the divorced wife of a wage-earner having in her care a child entitled to a child's insurance benefit. Her application was initially denied. After a hearing before an Administrative Law Judge, it was determined that appellee was entitled to wife's insurance benefits effective January 1, 1973. Thereafter, the Appeals Council, on its own motion, reviewed and reversed that decision, concluding that only married but not divorced wives under age 62 with dependent children in their care were entitled to benefits under Section 402(b)(1)(B). Appellee then sought judicial review of the denial of her application for wife's insurance benefits.

ARGUMENT

THE DISTRICT COURT'S DECISION ON THE MERITS OF THE CONSTITUTIONAL QUESTION PRESENTED IS CORRECT AND SHOULD BE AFFIRMED

Under Section 202(b)(1)(B) of the Social Security Act (42 U.S.C. §402(b)(1)(B)), a wife not yet age 62 who has a disabled child in her care is entitled to Social Security benefits, while a divorced wife, not yet 62, is not entitled to such benefits even though she also has a disabled child in her care, all other conditions being equal. The effect of Section 402(b)(1)(B) is, thus, to create two classes of needy women indistinguishable from each other except that the one is composed of women not divorced from their wage-earner husbands, and the second of women who have secured divorces after at least 20 years of marriage. On the basis of this sole difference, the first class is granted and the second class is denied Social Security benefits. The question in this case is whether this distinction based upon the marital status of the woman violates the Due Process Clause of the Fifth Amendment. The three-judge District Court below held that the different treatment accorded married and divorced wives by §402(b)(1)(B) invidiously discriminated against divorced wives in violation of the Fifth Amendment. We respectfully submit that the District Court's Judgment was correct and should be affirmed.

The standard for determining whether a statutory classification is constitutionally sound is whether the classification is rationally based and free from invidious discrimination. *Richardson* v. *Belcher*, 404 U.S. 78 (1971). Under this test, Congressional legislation does not offend the Con-

stitution if the goals to be accomplished are legitimate and the classification adopted is rationally related to the achievement of those goals. As this Court recognized in *Weinberger* v. *Salfi*, 442 U.S. 749, 772 (1975), Congress may not invidiously discriminate among claimants on the basis of criteria wholly unrelated to the object of the legislation. Tested by this standard, it is clear that the classification created by §402(b)(1)(B) bears no reasonable relation to legitimate legislative objectives.

It is apparent from the statutory scheme itself and from the legislative history of §402(b) that the Congressional purpose of providing benefits to wives with children in their care was to enable the wife to remain at home and care for the child.[1] By affording benefits to wives with dependent children in their care, Congress obviously sought to benefit persons such as appellee who, because they must devote full time to the care of their disabled children, are incapable of competing for a living in the national economy. The wife receives benefits not because she is married to the wage-earner, but because the benefits provided to her will enable her to remain at home and care for the children. It is the care of the disabled child which gives rise to the need for benefits. That need exists regardless of whether the child's mother is married, separated or divorced. Given the purpose of enabling mothers to remain at home to care for their children, the statutory distinction here involved based upon the marital status of the female applicant bears no rational relation to the achievement of the Congressional goal.

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[1] This same congressional purpose to provide children with the opportunity for the full-time care and attention of their parents was found in a companion section of the Social Security Act (42 U.S.C. §402(g)) in *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975).

It must be remembered that we deal here not with every divorced wife, but only with those defined by the Social Security Act. That is, wives who have been married at least 20 years and who presumably have made substantial sacrifices and contributions to the very family units it was the congressional purpose to protect. Why, then, should such wives be denied benefits in preference to wives whose marriages, though intact, are of lesser duration? Why should a wife separated from her husband be entitled to benefits and a divorced wife not, when the only difference between them is the stage to which the breakdown in their respective marriages has progressed? And why should children of wives separated but not divorced or children of wives married but less than 20 years have the advantages and opportunities afforded by their parents' full time care, but not the children of divorced wives? The children of divorced wives deserve the same degree of maintenance and support, care and attention as is accorded the children of other wives. The need for benefits in each case is the same, and should be satisfied for all regardless of the mother's marital state. To withhold benefits from wives divorced after more than 20 years of marriage who are caring for dependent children born of the marriage is to invidiously discriminate against them and their children without any rational basis for so doing.

Appellant suggests in his jurisdictional statement that Congress may draw classifications based upon its assessment of the probable need of individuals, and that the statutory scheme of §402(b) is consistent with the purpose of allocating benefits to those with the greatest need. The assumption evidently is that a married wife having a dependent child in her care has a greater economic need than a divorced wife caring for such a child. The assumption is without foundation in fact or logic. The needs of

wives with dependent children are substantially the same regardless of the wife's marital state. Under such circumstances, Congress' wholly unsubstantiated assessment of the greater need for benefits among wives with children in their care as opposed to divorced wives lacks the rationality required by equal protection guarantees.

Finally, appellant urges that the Congressional interest in preserving the fiscal integrity of the Social Security program is sufficiently important to justify plenary review by this Court. Fiscal problems, as was stated in *Shapiro* v. *Thompson,* 394 U.S. 618, 633 (1969), are legitimate concerns of government. But the government may not attempt to preserve the fiscal integrity of its programs by creating invidious distinctions between classes of its citizens. *ibid.* By providing benefits to married wives, but not divorced wives, Congress is using one's marital status as the criterion for assessing probable need. Similarly situated wives are accorded different treatment solely on the basis of their marital status, without regard to their economic need. Yet marital status is wholly unrelated and in fact irrelevant to a determination of one's need for social insurance benefits. Given the statutory purpose of providing benefits to wives who care for children, the classification created by Section 402(b)(1)(B)—based as it is on the marital status of the applicant—is not rationally related to the achievement of that goal.

Moreover, there is absolutely no evidence in the record either by way of testimony or affidavit, which would support the conclusion that allowing benefits to appellee and others similarly situated will significantly impair the Social Security Trust Fund. In a footnote to the Government's Brief submitted in the District Court, it was estimated that a 1,000 divorced wives as defined in §416(d) would receive

benefits at an additional annual cost of approximately $1,000,000.00 if a ruling were made in appellee's favor. In his jurisdictional statement, appellant now inexplicably estimates that an adverse ruling will entail the payment of approximately $9,000,000.00 in additional benefits (p. 5). Such bald conclusions are suspect and are simply insufficient to justify the invidious discrimination created by the statute involved here. *See also,* the seeming absence of any reliance upon increased costs in the majority and concurring opinions in *Wiesenfeld, supra.*

CONCLUSION

For all the foregoing reasons, it is respectfully urged that the judgment of the United States District Court for the Northern District of Illinois be affirmed.

Respectfully submitted,

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